

(6) (e)(3). To provide individuals supplying information with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7)(e)(4) (G) and (H). These subsections are inapplicable to the extent that this system is exempt from the access provisions of subsection (d) and the rules provisions of subsection (f).

(8)(e)(4)(I). The categories of sources of the records in this system have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9) (e)(5). In the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would inhibit the ability of trained investigators, intelligence analysts, and government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

(10)(e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11)(f). This subsection is inapplicable to the extent that this system is exempt from the access provisions of subsection (d).

(12)(g). Because some of the records in this system contain information which was compiled for law enforcement purposes and have been exempted from the access provisions of subsection (d), subsection (g) is inapplicable.

(s) The following system of records is exempted from 5 U.S.C. 552a(d).

Office of Special Investigations Displaced Persons Listings (JUSTICE/CRM-027).

This exemption applies to the extent that the records in this system are subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(t) Exemption from subsection (d) is justified for the following reasons:

(1) Access to records contained in this system could inform the subject of the identity of witnesses or informants. The release of such information could present a serious impediment to effective law enforcement by endangering the physical safety of witnesses or informants; by leading to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; or by otherwise preventing the successful completion of an investigation.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 16.91, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 16.92 Exemption of Environment and Natural Resources Division Systems—limited access.

(a)(1) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(8), (f) and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1):

(i) Environment and Natural Resources Division Case and Related Files System, JUSTICE/ENRD-003.

(ii) [Reserved]

(2) These exemptions apply only to the extent that information in this system relates to the investigation, prosecution or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy, and therefore is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations, and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by the Environment and Natural Resources Division.

(b) Only that information that relates to the investigation, prosecution or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3).* Subsection (c)(3) requires an agency to provide an accounting of disclosures of records concerning an individual. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4) (requiring an agency to inform individuals about any corrections made to a record that has been disclosed) and (g) (providing for civil remedies when an agency fails to comply with these provisions).* These provisions are inapplicable to the extent that this system of records is exempted from subsection (d).

(3) *Subsection (d).* Subsection (d) requires an agency to allow individuals to gain access to a record about him or herself; to dispute the accuracy, relevance, timeliness or completeness of

such records; and to have an opportunity to amend his or her record or seek judicial review. To the extent that information contained in this system has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could compromise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* Subsection (e)(1) requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish the agency's purpose. In the course of criminal or civil investigations, cases, or other matters, the Environment and Natural Resources Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(2).* Subsection (e)(2) requires an agency to collect information to the greatest extent practicable from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs. To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others with whom the subject might be in contact) would be informed of the existence of the investigation and

would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) *Subsection (e)(3)*. Subsection (e)(3) requires an agency to inform each individual whom it asks to supply information, on a form that can be retained by the individual, the authority which authorizes the solicitation, the principal purpose for the information, the routine uses of the information, and the effects on the individual of not providing the requested information. To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by disclosing the existence of a confidential investigation, revealing the identity of witnesses or confidential informants, or impeding the information gathering process.

(7) *Subsection (e)(5)*. Subsection (e)(5) requires an agency to maintain records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual. In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) *Subsection (e)(8)*. Subsection (e)(8) requires agencies to make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process. To serve notice would give persons sufficient warning to evade law enforcement efforts.

(9) *Subsections (f) and (g)*. Subsection (f) requires an agency to establish procedures to allow an individual to have access to information about him or herself and to contest information kept by an agency about him or herself. Subsection (g) provides for civil rem-

edies against agencies who fail to comply with the Privacy Act requirements. These provisions are inapplicable to the extent that this system is exempt from the access and amendment provisions of subsection (d).

(c) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (d):

(1) Freedom of Information/Privacy Act Records System. (Justice/LDN-005).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because that portion of the Freedom of Information/Privacy Act Records System that consists of investigatory materials compiled for law enforcement purposes is being exempted from access and contest; the provision for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and avoid interference with ongoing investigations or law enforcement activities by preventing premature disclosure of information relating to those efforts.

[Order No. 688-77, 42 FR 10000, Feb. 18, 1977, as amended by Order No. 207-2000, 65 FR 75158, Dec. 1, 2000]

§ 16.93 Exemption of Tax Division Systems—limited access.

(a) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of 5 U.S.C. 552a:

(1) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases (JUSTICE/TAX-001)—Limited Access.

(2) These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) The system of records listed under paragraph (a)(1) of this section is exempted for the reasons set forth below,